



In the Supreme Court of the United States

OCTOBER TERM, 1940.

No.

RAY RITTER, *et al.*,
Petitioners,

vs.

MILK AND ICE CREAM DRIVER AND DAIRY
EMPLOYEES UNION, Local 336, *et al.*,
Respondents.

MOTION TO DISPENSE WITH PRINTING AND SERVICE OF PORTIONS OF RECORD.

Counsel for petitioners file herewith their petition for a writ of certiorari to the Supreme Court of Ohio, accompanied by a Narrative Statement of the evidence approved by the Supreme Court of Ohio, the original certified record of the proceedings in the case in the Supreme Court of Ohio, together with a certified copy of the Orders, Journal Entries and Rulings in said court and in the Court of Appeals and Common Pleas Court of Cuyahoga County, Ohio, and all lodged with the clerk of this Court by the Supreme Court of Ohio.

1. The nature of this case and the questions presented by the petition for a writ of certiorari have been set forth in the foregoing petition.
2. The petitioners now seek to be relieved of printing that part of the record which is not necessary to a consideration of the Questions presented by the petition for a writ of certiorari filed herewith.

The record of the evidence including exhibits and opinion of the Court of Appeals consists of approximately 3500

pages. One exhibit numbering 5A to 5U, which contains the discussions of the negotiators from Sept. 8th to Oct. 21st, 1937, contains 2283 pages. The record proper exclusive of this exhibit contains portions of these conversations as relating to the matters involved in the petition for the writ of injunction in the courts below and in the petition for a writ of certiorari in this Court. In the same record is contained the full verbatim direct testimony offered by William Corrigan by way of defense. Mr. Corrigan was Counsel for the Union and participated during their negotiations from Oct. 5th to Oct. 21st, 1937. The defense relied almost entirely upon his testimony. In their briefs in the Court of Appeals and in the Supreme Court of Ohio the Union and Telling Belle Vernon Company did not cite, quote or rely upon any of the conversations referred to in Ex. 5A to 5U, quoting almost entirely from the testimony of Mr. Corrigan and of Mr. Jones. The testimony of Messrs. Sechler, Diltz and Jones, who were likewise negotiators, appears in the record proper and in narrative form in the Narrative Statement of the evidence approved by the Supreme Court of Ohio. The cost of printing the entire record with all the exhibits including Ex. 5A to 5U will, it is estimated, be approximately \$7,000 and perhaps more.

3. The petitioners on July 30th served the Union and Telling Belle Vernon Company, the only respondents who filed briefs in the Supreme Court of Ohio and argued orally, and to Dairymens Ohio Farmers, who adopted the briefs of Telling Belle Vernon in the Supreme Court and did not argue orally, a proposed stipulation that the record to be printed in this court consist of the following: (1) The names of the three respondents above named; (2) Articles 1, 20, 21, 23, 25, 34, 36 of Defendants' Exhibit 2; (3) Notice of Fairmont Creamery to brokers; (4) Article 31 of Defendants' Ex. A; (5) That only such parts of the Bill of Exceptions as shall be essential to a consideration of the Questions presented by the petition for a writ of certiorari which

shall be based on assignments #7, 9, 12, 13, 19, 20, 21 in the Supreme Court of Ohio, be printed and that these parts be reduced in narrative form; (6) a transcript of the Docket and Journal Entries in all the courts below and the opinions of the Court of Appeals and Common Pleas Court.

4. On August 1, 1940 the Statement containing verbatim the direct testimony of Mr. Corrigan and that of Mr. Smith reading from the transcribed notes the conversations of the negotiators appearing in the record proper, together with a Narrative Statement of the testimony of the other witnesses, was submitted to the respondents for stipulation. On the date of submission of the request, to wit: July 30th, Counsel for Telling Belle Vernon immediately stated he would not stipulate unless the entire Ex. 5A to 5U were included. Counsel for the Union indicated he would not agree until Counsel for Telling Belle Vernon agreed. This refusal was reiterated after August 1, 1940.
5. On August 7, 1940 Plaintiffs' Counsel attempted to reach an agreement with Counsel for Tellings to dispense with the printing of unnecessary material, but to no avail. Opposing counsel insisted that if the testimony of Smith were to appear in the Narrative Statement, the entire Ex. 5a to 5U, consisting of 2283 pages, be printed in full, even though the same counsel objected to the introduction of this exhibit when it was offered by other defendants in R. 728; N. S. 86; N. S. 129.
6. Ex. 5A to 5U contains many items which the Union and Employers Committee discussed from September 8th through October 21st, 1937 in addition to the discussions relating to brokers. Messrs. Sechler, Diltz, Jones, state so repeatedly, and it appears in the Narrative Statement approved by the court below. The petitioners do not deny it. Such matters as opening and closing hours, lights, time-clocks, etc., were all discussed. These have absolutely no bearing on the issues raised in the petition for a writ of certiorari. Yet the respondent Telling

Belle Vernon insists that these be printed *in toto* if Smith's testimony is to be printed. The Union refuses to stipulate unless and until Telling Belle Vernon does. The printing of so voluminous an exhibit would under the circumstances be unreasonable and we believe would be in violation of Rule 38, Section 8, providing for the printing of a reasonable record.

7. On August 14, 1940 the petitioners presented to counsel for the defendants a copy of the petition herein filed, based upon the narrative statement heretofore presented to them for stipulation on August 1, 1940, together with verbatim copies of plaintiffs-appellants' Exhibits 1, 3, 4 and defendants' Exhibit A, and requested their stipulation to the narrative statement thus supplemented and amended, advising them that if they failed to stipulate, the narrative statement would be presented to the Supreme Court of Ohio for its approval on August 16, 1940. Exhibit 3 and Exhibit 2 are identical in terms except for name of employer.

The defendants refused to stipulate, and on August 16, 1940 counsel for The Telling Belle Vernon Company appeared in the Supreme Court of Ohio and argued against the approval of the narrative statement. On August 17, 1940, Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio, approved the narrative statement for the court.

The petitioners are marginal people and are financially unable to expend approximately \$7,000 for the printing of the entire record including this exhibit. If they are compelled to print the same, they would be deprived of the means of presenting their petition to this Court, although they earnestly believe their constitutional rights were violated. In lieu thereof the petitioners have lodged the entire original record certified as being the record of the testimony in the Supreme Court of Ohio, together with a certified copy of the Docket and Journal Entries and Rul-

ings in all courts below, and are filing herewith a Narrative Statement approved by the Supreme Court of Ohio after a full hearing of this issue before the Chief Justice of the Supreme Court of Ohio, at Columbus, Ohio, on August 16, 1940.

WHEREFORE, It is prayed: (a) That the Court rule that the accompanying petition for a writ is properly filed upon the record consisting of the original certified record of the testimony before the Supreme Court of Ohio; (b) That it consider the case upon the required number of printed copies of the Narrative Statement and the exhibits approved by the Supreme Court of Ohio and filed in this Court; (c) That it rule that service which petitioners are now making upon respondents of copies of this motion, the Petition for a Writ of Certiorari and the approved Narrative Statement, constitutes sufficient compliance with the rules of this Court.

Respectfully submitted,

CHARLES AUERBACH,
RAY T. MILLER,

Counsel for Petitioners.

CHARLES AUERBACH,
Of Counsel.